

1989 No. 1058

RATING AND VALUATION

**The Non-Domestic Rating (Collection and Enforcement)
(Local Lists) Regulations 1989**

<i>Made - - - -</i>	<i>26th June 1989</i>
<i>Laid before Parliament</i>	<i>30th June 1989</i>
<i>Coming into force</i>	<i>21st July 1989</i>

The Secretary of State for the Environment as respects England, and the Secretary of State for Wales as respects Wales, in exercise of the powers conferred on them by sections 63, 143(1) and (2) and 146(6) of, and paragraphs 1 to 4 of Schedule 9 to, the Local Government Finance Act 1988(a), and of all other powers enabling them in that behalf, hereby make the following Regulations:

**PART I
GENERAL**

Citation, commencement and interpretation

1.—(1) These Regulations may be cited as the Non-Domestic Rating (Collection and Enforcement) (Local Lists) Regulations 1989 and shall come into force on 21st July 1989.

(2) In these Regulations “the Act” means the Local Government Finance Act 1988.

Service of notices

2.—(1) Where any notice which is required or authorised by these Regulations to be given to or served on a person falls to be given or served by or on behalf of the Common Council or by an officer of the Common Council, it may be given or served in any manner in which it might be given or served under section 233 of the Local Government Act 1972(b) if the Common Council were a local authority within the meaning of that section.

(2) Without prejudice to section 233 of the Local Government Act 1972 and paragraph (1) above, where any notice which is required or authorised by these Regulations to be given to or served on a person relates to a hereditament which is (or, where such a notice relates to more than one hereditament, one or more of which is) a place of business of that person, it may be given or served by leaving it at, or by sending it by post to him at, the place of business (or, as the case may be, one of those places of business).

(a) 1988 c.41; provisions relevant to the exercise of the powers conferred by paragraph 3(3) of Schedule 9 were made in S.I. 1989/438, Part IV.

(b) 1972 c.70; subsection (6) was repealed by the Local Government (Miscellaneous Provisions) Act 1976 (c.57), Schedule 2.

PART II

BILLING

Interpretation and application of Part II

3.—(1) In this Part—

“the amount payable” for a chargeable financial year or part of a chargeable financial year in relation to a ratepayer, a charging authority and a hereditament means the amount the ratepayer is liable to pay to the authority as regards the hereditament in respect of the year or part under section 43 or 45 of the Act (whether calculated by reference to section 43(4) to (6) or 45(4) to (6) or by reference to an amount or rules determined or prescribed under section 47(1)(a) or 57(3)(a) of the Act);

“demand notice” means the notice required to be served by regulation 4(1);

“ratepayer” in relation to a chargeable financial year and a charging authority means a person liable to pay an amount under section 43 or 45 of the Act to the authority in respect of the year; and

“relevant year” in relation to a notice means the chargeable financial year to which the notice relates.

(2) For the purposes of this Part the conditions mentioned in section 43(1) or 45(1) of the Act are not to be treated as fulfilled as regards a hereditament on any day on which the chargeable amount for the day in respect of it is 0 by virtue of a determination to that effect under section 47(1)(a) of the Act.

(3) Where references are made in this Part to the day on which a notice is issued, they shall be taken to be references—

(a) if the notice is served in the manner described in regulation 2(2) or section 233(2) of the Local Government Act 1972 by being left at, or sent by post to, a person’s place of business or proper address, to the day on which it is so left or posted, or

(b) in any other case, to the day on which it is served.

(4) The provisions of this Part which provide for the repayment or crediting of any amount or the adjustment of payments due under a notice (including in particular paragraph 7 of Schedule 1) shall have effect subject to paragraph 10(4) of Schedule 7 to the Act.

The requirement for demand notices

4.—(1) For each chargeable financial year a charging authority shall, in accordance with regulations 5 to 7, serve a notice in writing on every person who is a ratepayer of the authority in relation to the year.

(2) Different demand notices shall be served for different chargeable financial years.

(3) A demand notice shall be served with respect to the amount payable for every hereditament as regards which a person is a ratepayer of the authority, though a single notice may relate to the amount payable with respect to more than one such hereditament.

(4) If a single demand notice relates to the amount payable with respect to more than one hereditament, subject to paragraphs 5 and 8 of Schedule 1 the amounts due under it, and the times at which they fall due, shall be determined as if separate notices were issued in respect of each hereditament.

Service of demand notices

5.—(1) Subject to paragraph (2), a demand notice shall be served on or as soon as practicable after—

(a) except in a case falling within sub-paragraph (b), 1st April in the relevant year, or

(b) if the conditions mentioned in section 43(1) or 45(1) of the Act are not fulfilled in respect of that day as regards the ratepayer and the hereditament concerned,

the first day after that day in respect of which such conditions are fulfilled as regards them.

(2) A demand notice may, if the non-domestic multiplier for the relevant year has been determined or set under Schedule 7 to the Act, be served before the beginning of the relevant year on a person with respect to whom on the day it is issued it appears to the charging authority that the conditions mentioned in section 43(1) or 45(1) of the Act are fulfilled (or would be fulfilled if a list sent under section 41(5) of the Act were in force) as regards the hereditament to which it relates; and if it is so served, references in this Part to a ratepayer shall, in relation to that notice and so far as the context permits, be construed as references to that person.

Payments under demand notices

6.—(1) If a demand notice is issued before or during the relevant year and it appears to the charging authority that the conditions mentioned in section 43(1) or 45(1) of the Act are fulfilled (or would be fulfilled if a list sent under section 41(5) of the Act were in force) in respect of the day on which the notice is issued as regards the ratepayer and the hereditament to which it relates, the notice shall require payment of an amount equal to the charging authority's estimate of the amount payable for the year, made as respects periods after the issue of the notice on the assumption that the conditions concerned will continue to be fulfilled on every day after that day.

(2) If a demand notice is issued during the relevant year but paragraph (1) does not apply, the notice shall require payment of an amount equal to the amount payable for the period in the year up to the day on which the conditions mentioned in sections 43(1) and 45(1) were last fulfilled as regards the ratepayer and hereditament concerned.

(3) If, after a notice is served to which paragraph (2) applies, the conditions mentioned in section 43(1) or 45(1) of the Act are fulfilled again in the relevant year as regards the ratepayer and the hereditament concerned, a further notice shall be served on him requiring payments with respect to the amount payable in relation to the hereditament for the period in the relevant year beginning with the day in respect of which the conditions are so fulfilled again; and regulations 5 to 8 (and, so far as applicable, Schedule 1) shall apply to the further notice with respect to that period as if it were a demand notice and the conditions had not previously been fulfilled.

(4) If a demand notice is issued after the end of the relevant year, it shall require payment of the amount payable for the year.

Payments under demand notices: further provision

7.—(1) Unless an agreement under paragraph (3) in relation to the relevant year has been reached between the ratepayer and the charging authority before the demand notice is issued, a notice to which regulation 6(1) applies shall require the estimate of the amount payable to be paid by instalments in accordance with Part I of Schedule 1; and where such instalments are required Part II of the Schedule applies for their cessation or adjustment in the circumstances described in that Part.

(2) If an agreement under paragraph (3) in relation to the relevant year has been reached between the charging authority and the ratepayer before the demand notice is issued, a notice to which regulation 6(1) applies shall require the estimate of the amount payable to be paid in accordance with that agreement.

(3) A charging authority and a ratepayer may agree that the estimate of the amount payable which is required to be paid under a notice to which regulation 6(1) applies should be paid in such manner as is provided by the agreement, rather than in accordance with Schedule 1.

(4) Notwithstanding anything in the foregoing provisions of this regulation, such an agreement may be entered into either before or after the demand notice concerned is issued, and may make provision for the cessation or adjustment of payments, and for the making of fresh estimates, in the event of the estimate mentioned in regulation 6(1) turning out to be wrong; and if it is entered into after the demand notice has been issued, it may make provision dealing with the treatment for the purposes of the agreement of any sums paid in accordance with Schedule 1 before it was entered into.

(5) A notice to which regulation 6(2) or (4) applies shall require payment of the amount payable on the expiry of such period (being not less than 14 days) after the day of issue of the notice as is specified in it.

(6) No payment in respect of the amount payable by a ratepayer in relation to a hereditament for any chargeable financial year (whether interim, final or sole) need be made unless a notice served under this Part requires it.

Failure to pay instalments

8.—(1) Where—

- (a) a demand notice has been served by a charging authority on a ratepayer,
- (b) instalments are payable under the notice in accordance with Schedule 1, and
- (c) any such instalment is not paid in accordance with the Schedule,

the charging authority shall (unless all the instalments have fallen due) serve a further notice on the ratepayer stating the instalments required to be paid.

(2) If, after the service of a further notice under paragraph (1), the ratepayer—

- (a) fails to pay, before the expiry of the period of 7 days beginning with the day of service of the further notice, any instalments which fall due before the expiry of that period under the demand notice concerned, or
- (b) fails to pay any instalment which falls due after the expiry of that period under the demand notice concerned on or before the day on which it so falls due,

the unpaid balance of the estimated amount shall become payable by him at the expiry of a further period of 7 days beginning with the day of the failure.

(3) If the unpaid balance of the estimated amount has become payable under paragraph (2), and on calculating the amount payable for the relevant year in relation to a hereditament to which the demand notice concerned relates that amount proves to be greater than the estimated amount in relation to the hereditament, an additional sum equal to the difference between the two shall, on the service by the charging authority on the ratepayer of a notice stating the amount payable, be due from the person to the authority on the expiry of such period (being not less than 14 days) after the day of issue of the notice as is specified in it.

(4) If the unpaid balance of the estimated amount has become payable under paragraph (2), and on calculating the amount payable for the relevant year in relation to a hereditament to which the demand notice concerned relates that amount proves to be less than the estimated amount in relation to the hereditament, the charging authority shall notify the ratepayer in writing of the amount payable; and any overpayment in respect of any liability of the ratepayer under this Part—

- (a) shall be repaid if the ratepayer so requires, or
- (b) in any other case shall (as the charging authority determines) either be repaid or be credited against any subsequent liability of the ratepayer to pay anything to it by way of non-domestic rate.

(5) If any factor or assumption by reference to which the estimated amount was calculated in relation to a hereditament is shown to be false before the amount payable is capable of final determination for the purposes of paragraphs (3) and (4), the charging authority may, and if so required by the ratepayer shall, make a calculation of the appropriate amount with a view to adjusting the ratepayer's liability in respect of the estimated amount and (as appropriate) to—

- (a) requiring an interim payment from the ratepayer if the appropriate amount is greater than the estimated amount, or
- (b) making an interim repayment to the ratepayer if the appropriate amount is less than the amount of the estimated amount paid.

(6) The appropriate amount for the purposes of paragraph (5) is the amount which would be required to be paid under a demand notice if such a notice were issued with respect to the relevant year, the ratepayer and the hereditament on the day that the notice under paragraph (7) is issued or the repayment under paragraph (5)(b) is made (as the case may be); and more than one calculation of the appropriate amount and interim payment or repayment may be required or made under paragraph (5) according to the circumstances.

(7) On calculating the appropriate amount the charging authority shall notify the ratepayer in writing of it; and a payment required under paragraph (5)(a) shall be due from the ratepayer to the charging authority on the expiry of such period (being not less than 14 days) after the day of issue of the notice as is specified in it.

(8) In this regulation—

“the appropriate amount” has the meaning given in paragraph (6); and

“the estimated amount” means the amount last estimated under regulation 6(1) for the purposes of the demand notice mentioned in paragraph (1)(a) or any subsequent notice given under paragraph 7(2) of Schedule 1 prior to the failure mentioned in paragraph (2) above, save that if in any case an interim adjustment has been required or made under paragraph (5) in relation to a hereditament, it means as regards the next payment, repayment or interim adjustment in relation to the hereditament under this regulation (if any), the appropriate amount by reference to which the previous interim adjustment was so made.

Demand notices: final adjustment

9.—(1) This regulation applies where—

(a) a notice has been issued by a charging authority under this Part requiring a payment or payments to be made by a ratepayer in respect of the amount payable in relation to a hereditament for a chargeable financial year or part of a chargeable financial year,

(b) the payment or payments required to be paid are found to be in excess of or less than the amount payable in relation to the hereditament for the year or the part, and

(c) provision for adjusting the amounts required under the notice and (as appropriate) for the making of additional payments or the repaying or crediting of any amount overpaid is not made by any other provision of this Part, of the Act or of any agreement entered into under regulation 7(3).

(2) The charging authority shall as soon as practicable after the expiry of the year or the part of a year serve a further notice on the ratepayer stating the amount payable for the year or part in relation to the hereditament, and adjusting (by reference to that amount) the amounts required to be paid under the notice referred to in paragraph (1)(a).

(3) If the amount stated in the further notice is greater than the amount required to be paid under the notice referred to in paragraph (1)(a), the amount of the difference for which such other provision as is mentioned in paragraph (1)(c) is not made shall be due from the ratepayer to the charging authority on the expiry of such period (being not less than 14 days) after the day of issue of the notice as is specified in it.

(4) If there has been an overpayment in respect of any liability of the ratepayer under this Part, the amount overpaid for which such other provision as is mentioned in paragraph (1)(c) is not made—

(a) shall be repaid if the ratepayer so requires, or

(b) in any other case shall (as the charging authority determines) either be repaid or be credited against any subsequent liability of the ratepayer to pay anything to it by way of non-domestic rate.

PART III ENFORCEMENT

Interpretation and application of Part III

10.—(1) In this Part—

“debtor” means a person against whom a liability order has been made; and

“liability order” means an order under regulation 12.

(2) A sum which has become payable to a charging authority under Part II and which has not been paid shall be recoverable under a liability order, or in a court of competent jurisdiction, in accordance with regulations 11 to 21.

(3) References in this Part to a sum which has become payable and which has not been paid include references to a sum forming part of a larger sum which has become payable and the other part of which has been paid.

Liability orders: preliminary steps

11.—(1) Subject to paragraph (3), before a charging authority applies for a liability order it shall serve on the person against whom the application is to be made a notice (“reminder notice”), which is to be in addition to any notice required to be served under Part II and which is to state every amount in respect of which the authority is to make the application.

(2) A reminder notice may be served in respect of an amount at any time after it has become due.

(3) A reminder notice need not be served on a person who has been served under regulation 8(1) with a notice in respect of the amount concerned where there has been such a failure as is mentioned in regulation 8(2)(a) in relation to the notice.

Application for liability order

12.—(1) Subject to paragraph (3), if an amount which has fallen due under regulation 8(2) in consequence of such a failure as is mentioned in sub-paragraph (a) of that provision is wholly or partly unpaid, or (in a case where a reminder notice is required under regulation 11) the amount stated in the reminder notice is wholly or partly unpaid at the expiry of the period of 7 days beginning with the day on which the notice was served, the charging authority may, in accordance with paragraph (2), apply to a magistrates’ court for an order against the person by whom it is payable.

(2) The application is to be instituted by making complaint to a justice of the peace, and requesting the issue of a summons directed to that person to appear before the court to show why he has not paid the sum which is outstanding.

(3) Section 127(1) of the Magistrates’ Courts Act 1980(a) does not apply to such an application; but no application may be instituted in respect of a sum after the period of 6 years beginning with the day on which it became due under Part II.

(4) A warrant shall not be issued under section 55(2) of the Magistrates’ Courts Act 1980 in any proceedings under this regulation.

(5) The court shall make the order if it is satisfied that the sum has become payable by the defendant and has not been paid.

- (6) The order shall be made in respect of an amount equal to the aggregate of—
- (a) the sum payable, and
 - (b) a sum of an amount equal to the costs reasonably incurred by the applicant in obtaining the order.

Liability orders: further provision

13.—(1) A single liability order may deal with one person and one such amount as is mentioned in regulation 12(6) (in which case the order shall be in the form specified as form A in Schedule 2, or a form to the like effect), or, if the court thinks fit, may deal with more than one person and more than one such amount (in which case the order shall be in the form specified as form B in that Schedule, or a form to the like effect).

- (2) A summons issued under regulation 12(2) may be served on a person—
- (a) by delivering it to him,
 - (b) by leaving it at his usual or last known place of abode, or in the case of a company, at its registered office,
 - (c) by sending it by post to him at his usual or last known place of abode, or in the case of a company, to its registered office,

(a) 1980 c.43.

- (d) where all or part of the sum to which it relates is payable with respect to a hereditament which is a place of business of the person, by leaving it at, or by sending it by post to him at, the place of business, or
- (e) by leaving it at, or by sending it by post to him at, an address given by the person as an address at which service of the summons will be accepted.

(3) The amount in respect of which a liability order is made is enforceable in accordance with this Part; and accordingly for the purposes of any of the provisions of Part III of the Magistrates' Courts Act 1980 (satisfaction and enforcement) it is not to be treated as a sum adjudged to be paid by order of the court.

Distress

14.—(1) Where a liability order has been made, the authority which applied for the order may levy the appropriate amount by distress and sale of the goods of the debtor against whom the order was made.

- (2) The appropriate amount for the purposes of paragraph (1) is the aggregate of—
 - (a) an amount equal to any outstanding sum which is or forms part of the amount in respect of which the liability order was made, and
 - (b) a sum determined in accordance with Schedule 3 in respect of charges connected with the distress.

(3) If, before any goods are seized, the appropriate amount (including charges arising up to the time of the payment or tender) is paid or tendered to the authority, the authority shall accept the amount and the levy shall not be proceeded with.

(4) Where an authority has seized goods of the debtor in pursuance of the distress, but before sale of those goods the appropriate amount (including charges arising up to the time of the payment or tender) is paid or tendered to the authority, the authority shall accept the amount, the sale shall not be proceeded with and the goods shall be made available for collection by the debtor.

(5) The person levying distress on behalf of an authority shall carry with him the written authorisation of the authority, which he shall show to the debtor if so requested; and he shall hand to the debtor or leave at the premises where the distress is levied a copy of this regulation and Schedule 3 and a memorandum setting out the appropriate amount, and shall hand to the debtor a copy of any close or walking possession agreement entered into.

(6) A distress may be made anywhere in England and Wales.

(7) A distress shall not be deemed unlawful on account of any defect or want of form in the liability order, and no person making a distress shall be deemed a trespasser on that account; and no person making a distress shall be deemed a trespasser from the beginning on account of any subsequent irregularity in making the distress, but a person sustaining special damage by reason of the subsequent irregularity may recover full satisfaction for the special damage (and no more) by proceedings in trespass or otherwise.

(8) The provisions of this regulation shall not affect the operation of any enactment which protects goods of any class from distress.

(9) Nothing in the Distress (Costs) Act 1817(a), as extended by the Distress (Costs) Act 1827(b), (which make provision as to the costs and expenses chargeable in respect of the levying of certain distresses) shall apply to a distress under this regulation.

Appeals in connection with distress

15.—(1) A person aggrieved by the levy of, or an attempt to levy, a distress may appeal to a magistrates' court.

(2) The appeal shall be instituted by making complaint to a justice of the peace, and requesting the issue of a summons directed to the authority which levied or attempted to levy the distress to appear before the court to answer to the matter by which he is aggrieved.

(a) 1817 c.93.

(b) 1827 c.17.

(3) If the court is satisfied that a levy was irregular, it may order the goods distrained to be discharged if they are in the possession of the authority; and it may by order award compensation in respect of any goods distrained and sold of an amount equal to the amount which, in the opinion of the court, would be awarded by way of special damages in respect of the goods if proceedings were brought in trespass or otherwise in connection with the irregularity under regulation 14(7).

(4) If the court is satisfied that an attempted levy was irregular, it may by order require the authority to desist from levying in the manner giving rise to the irregularity.

Commitment to prison

16.—(1) Where a charging authority has sought to levy an amount by distress under regulation 14, the debtor is an individual, and it appears to the authority that no (or insufficient) goods of the debtor can be found on which to levy the amount, the authority may apply to a magistrates' court for the issue of a warrant committing the debtor to prison.

(2) On such application being made the court shall (in the debtor's presence) inquire as to his means and inquire whether the failure to pay which led to the liability order concerned being made against him was due to his wilful refusal or culpable neglect.

(3) If (and only if) the court is of the opinion that his failure was due to his wilful refusal or culpable neglect it may if it thinks fit—

- (a) issue a warrant of commitment against the debtor, or
- (b) fix a term of imprisonment and postpone the issue of the warrant until such time and on such conditions (if any) as the court thinks just.

(4) The warrant shall be made in respect of the relevant amount; and the relevant amount for this purpose is the aggregate of—

- (a) the appropriate amount mentioned in regulation 14(2), or (as the case may be) so much of it as remains outstanding, and
- (b) a sum of an amount equal to the costs reasonably incurred by the applicant in respect of the application.

(5) The warrant—

- (a) shall state the relevant amount mentioned in paragraph (4),
- (b) may be directed to the authority making the application and to such other persons (if any) as the court issuing it thinks fit, and
- (c) may be executed anywhere in England and Wales by any person to whom it is directed.

(6) If—

- (a) before the issue of a warrant the appropriate amount mentioned in regulation 14(2) (or so much of it as remains outstanding) is paid or tendered to the authority, or
- (b) after the issue of the warrant, the amount stated in it is paid or tendered to the authority,

the authority shall accept the amount concerned, no further steps shall be taken as regards its recovery, and the debtor if committed to prison shall be released.

(7) The order in the warrant shall be that the debtor be imprisoned for a time specified in the warrant which shall not exceed 3 months, unless the amount stated in the warrant is sooner paid; but—

- (a) where a warrant is issued after a postponement under paragraph (3)(b) and, since the term of imprisonment was fixed but before the issue of the warrant, the amount mentioned in paragraph (4)(a) with respect to which the warrant would (but for the postponement) have been made has been reduced by a part payment, the period of imprisonment ordered under the warrant shall be the term fixed under paragraph (3) reduced by such number of days as bears to the total number of days in that term less one day the same proportion as the part paid bears to that amount, and
- (b) where, after the issue of a warrant, a part payment of the amount stated in it is made, the period of imprisonment shall be reduced by such number of days as bears to the total number of days in the term of imprisonment specified in the

warrant less one day the same proportion as the part paid bears to the amount so stated.

(8) In calculating a reduction required under paragraph (7) any fraction of a day shall be left out of account; and rule 55(1), (2) and (3) of the Magistrates' Courts Rules 1981(a) applies (so far as is relevant) to a part payment as if the imprisonment concerned were imposed for want of sufficient distress to satisfy a sum adjudged to be paid by a magistrates' court.

Commitment to prison: further provision

17.—(1) A single warrant may not be issued under regulation 16 against more than one person, and shall be in the form specified as form C in Schedule 2, or in a form to the like effect.

(2) Where an application under regulation 16 has been made, and after the making of the inquiries mentioned in paragraph (2) of that regulation no warrant is issued or term of imprisonment fixed, the court may remit all or part of the appropriate amount mentioned in regulation 14(2) to which the application relates.

(3) Where an application under regulation 16 has been made but no warrant is issued or term of imprisonment fixed, the application may be renewed (except so far as regards any sum remitted under paragraph (2)) on the ground that the circumstances of the debtor have changed.

(4) A statement in writing to the effect that wages of any amount have been paid to the debtor during any period, purporting to be signed by or on behalf of his employer, shall in any proceedings under regulation 16 be evidence of the facts there stated.

(5) For the purpose of enabling enquiry to be made as to the debtor's conduct and means under regulation 16(2), a justice of the peace may—

- (a) issue a summons to him to appear before a magistrates' court and (if he does not obey the summons) issue a warrant for his arrest, or
- (b) issue a warrant for the debtor's arrest without issuing a summons.

(6) A warrant issued under paragraph (5) may be executed anywhere in England and Wales by any person to whom it is directed or by any constable acting within his police area; and section 125(3) of the Magistrates' Courts Act 1980 applies to such a warrant.

(7) Regulation 16 and this regulation have effect subject to Part I of the Criminal Justice Act 1982(b) (treatment of young offenders).

Insolvency

18.—(1) Where a liability order has been made and the debtor against whom it was made is an individual, the amount due shall be deemed to be a debt for the purposes of section 267 of the Insolvency Act 1986(c) (grounds of creditor's petition).

(2) Where a liability order has been made and the debtor against whom it was made is a company, the amount due shall be deemed to be a debt for the purposes of section 122(1)(f) of that Act (winding up of companies by the court).

(3) The amount due for the purposes of this regulation is an amount equal to any outstanding sum which is or forms part of the amount in respect of which the liability order was made.

Relationship between remedies under a liability order

19.—(1) Where a warrant of commitment is issued against (or a term of imprisonment is fixed in the case of) a person under regulation 16(3), no steps, or no further steps, may be taken under this Part by way of distress or bankruptcy in relation to the relevant amount mentioned in regulation 16(4).

(2) Steps under this Part by way of distress, commitment, bankruptcy or winding up may not be taken against a person under a liability order while steps by way of another of those methods are being taken against him under it.

(a) S.I. 1981/552.

(b) 1982 c.48.

(c) 1986 c.45.

(3) Subject to paragraphs (1) and (2) distress may be resorted to more than once.

(4) Where a step is taken by way of distress for the recovery of an outstanding sum which is or forms part of an amount in respect of which a liability order has been made, any sum recovered thereby which is less than the aggregate of the amount outstanding and any charges arising under Schedule 3 shall be treated as discharging first the charges, the balance (if any) being applied towards the discharge of the outstanding sum.

Recovery in court of competent jurisdiction

20.—(1) A sum which has become payable to a charging authority under Part II, which has not been paid, and in respect of which a liability order has not been made may (as an alternative to recovery under a liability order) be recovered in a court of competent jurisdiction.

(2) A liability order may not be made in respect of any amount in relation to which proceedings have been instituted under paragraph (1) above.

Magistrates' courts

21.—(1) Justices of the peace appointed for a commission area within which is situated the area of a charging authority shall have jurisdiction to act under the provisions of this Part as respects that authority.

(2) Subject to any other enactment authorising a stipendiary magistrate or other person to act by himself, a magistrates' court shall not under this Part hear a summons, entertain an application for a warrant or hold an inquiry as to means on such an application except when composed of at least two justices.

(3) References to a justice of the peace in regulations 12(2) and 15(2) shall be construed subject to rule 3 of the Justices' Clerks Rules 1970(a) (which authorises certain matters authorised to be done by a justice of the peace to be done by a justices' clerk).

Repayments

22. A sum which has become payable (by way of repayment) under Part II to a person other than a charging authority but which has not been paid shall be recoverable in a court of competent jurisdiction.

Miscellaneous provisions

23.—(1) Any matter which could be the subject of an appeal under regulations under section 55 of the Act may not be raised in proceedings under this Part.

(2) The contents of a local non-domestic rating list or an extract from such a list may be proved in proceedings under this Part by production of a copy of the list or relevant part of the list purporting to be certified by the proper officer of the charging authority to which the list or extract relates to be a true copy.

(3) If a liability order has been made and by virtue of—

(a) a notification which is given by the charging authority under regulation 8(4) or (7) or 9(2) or paragraph 6(3) or 7(2)(a) of Schedule 1, or

(b) paragraph 10(4) of Schedule 7 to the Act applying in any case,

any part of the amount mentioned in regulation 12(6)(a) in respect of which the order was made would (if paid) fall to be repaid or credited against any subsequent liability, that part shall be treated for the purposes of this Part as paid on the day the notification is given or the multiplier in substitution is set under paragraph 10 of Schedule 7 to the Act (as the case may be) and accordingly as no longer outstanding.

(4) If, after a warrant is issued or term of imprisonment is fixed under regulation 16(3), and before the term of imprisonment has begun or been fully served, a charging authority gives such a notification as is mentioned in paragraph (3)(a) in the case in question, or sets a multiplier in substitution so that paragraph 10(4) of Schedule 7 to the Act applies in the case in question, it shall forthwith notify accordingly the clerk of the court which issued the warrant and (if the debtor is detained) the governor or keeper of the prison or place where he is detained or such other person as has lawful custody of him.

(a) S.I. 1970/231, to which there are amendments not relevant to these Regulations.

PART IV
MISCELLANEOUS

Outstanding liabilities on death

24.—(1) This regulation applies where a person dies and at any time before his death he was (or is alleged to have been) subject to a non-domestic rate.

(2) Where—

- (a) before the deceased's death a sum has become payable by him under Part II or by way of the relevant costs in respect of a non-domestic rate but has not been paid, or
- (b) after the deceased's death a sum would, but for his death (and whether or not on the service of a notice) become payable by him under Part II in respect of a non-domestic rate,

his executor or administrator shall, subject to paragraph (3) and to the extent that it is not in excess of the deceased's liability under the Act (including relevant costs payable by him) in respect of the rate, be liable to pay the sum and may deduct out of the assets and effects of the deceased any payments made (or to be made).

(3) Where paragraph (2)(b) applies, the liability of the executor or administrator does not arise until the service on him of a notice requiring payment of the sum.

(4) Where before the deceased's death a sum in excess of his liability under the Act (including relevant costs payable by him) in respect of a non-domestic rate has been paid (whether the excess arises because of his death or otherwise) and has not been repaid or credited under Part II, his executor or administrator shall be entitled to the sum.

(5) Costs are relevant costs for the purposes of paragraphs (2) and (4) if—

- (a) an order or warrant (as the case may be) was made by the court in respect of them under regulation 12(6)(b) or 16(4)(b), or in proceedings under regulation 20, or
- (b) they are charges connected with distress which may be recovered pursuant to regulation 14(2)(b).

(6) A sum payable under paragraph (2) shall be enforceable in the administration of the deceased's estate as a debt of the deceased and accordingly—

- (a) no liability order need be applied for in respect of it after the deceased's death under regulation 12, and
- (b) the liability of the executor or administrator is a liability in his capacity as such.

(7) Regulation 23(1) and (2) applies to proceedings to enforce a liability arising under this regulation as it applies to proceedings under Part III.

(8) Insofar as is relevant to his liability under this regulation in the administration of the deceased's estate, the executor or administrator may institute, continue or withdraw proceedings (whether by way of appeal under regulations under section 55 of the Act or otherwise).

26th June 1989

Nicholas Ridley
Secretary of State for the Environment

26th June 1989

Peter Walker
Secretary of State for Wales

NON-DOMESTIC RATE INSTALMENT SCHEME

PART I

PAYMENT OF THE AGGREGATE AMOUNT

1.—(1) This paragraph applies where the demand notice is issued on or before 31st December in the relevant year, but has effect subject to paragraph 3.

(2) The aggregate amount is to be payable in monthly instalments, the number of such instalments being 10 or, if less, the number of whole months remaining in the relevant year after the issue of the notice less one.

(3) The months in which the instalments are payable must be uninterrupted, but subject to that (and to paragraph 4) are to be such months in the relevant year as are specified in the notice; and the instalments are to be payable on such day in each month as is so specified.

(4) If the aggregate amount divided by the number of instalments gives an amount which is a multiple of a pound, the instalments shall be of that amount.

(5) If the aggregate amount so divided would not give such an amount, all but the first instalment shall be of an amount equal to A and the first instalment shall be of an amount equal to B, where—

$A = \frac{C}{D}$, rounded up or down (as the case may be) to the nearest multiple of a pound,

$B = C - (D - 1) \times A$,

C is equal to the aggregate amount, and

D is equal to the number of instalments to be paid.

2. Where the demand notice is issued between 1st January and 31st March in the relevant year, the aggregate amount is to be payable in a single instalment on such day as is specified in the notice.

3.—(1) If amounts calculated in accordance with paragraph 1 would produce an amount for an instalment of less than £50, the demand notice may require the aggregate amount to be paid—

(a) where the aggregate amount is less than £100, in a single instalment payable on such day as is specified in the notice, or

(b) where the aggregate amount is equal to or greater than £100, by a number of monthly instalments equal to the greatest whole number by which £50 can be multiplied to give a product which is less than or equal to the aggregate amount.

(2) The months in which the instalments under sub-paragraph (1)(b) are payable must be uninterrupted, but subject to that are to be such of the months in which, but for this paragraph, the instalments would have been payable under paragraph 1 as are specified in the demand notice; and the instalments are to be payable on such day in each month as is so specified.

(3) Paragraph 1(4) and (5) applies to instalments under sub-paragraph (1)(b) as it applies to instalments under paragraph 1(2).

4. The demand notice shall be issued at least 14 days before the day on which the first instalment is due under it.

5. In this Part “the aggregate amount” means the amount of the estimate referred to in regulation 6(1), or if pursuant to regulation 4(3) the demand notice relates to more than one hereditament for which such an estimate is made, the aggregate of the amount of those estimates.

PART II

CESSATION AND ADJUSTMENT OF INSTALMENTS

6.—(1) This paragraph applies where the demand notice has been served on a ratepayer by a charging authority, and in respect of a day (“the relevant day”) after its issue neither the conditions mentioned in section 43(1) nor those mentioned in section 45(1) of the Act are fulfilled (or, as the case may be, would be fulfilled if a list sent under section 41(5) of the Act were in force) as regards the ratepayer and the hereditament to which the notice relates.

(2) Subject to sub-paragraphs (5) and (6), no payments of instalments falling due after the relevant day are payable under the notice in relation to the hereditament.

(3) The charging authority shall on the relevant day or as soon as practicable after that day serve a notice on the ratepayer stating the amount payable in relation to the hereditament for the period in the relevant year up to the relevant day.

(4) If the amount stated under sub-paragraph (3) is less than the aggregate amount of any instalments which have fallen due on or before the relevant day in relation to the hereditament, the difference shall go in the first instance to discharge any liability to pay the instalments (to the extent that they remain unpaid); and any residual overpayment in respect of any liability of the ratepayer under Part II of these Regulations—

- (a) shall be repaid if the ratepayer so requires, or
- (b) in any other case shall (as the charging authority determines) either be repaid or credited against any subsequent liability of the ratepayer to pay anything to it by way of non-domestic rate.

(5) If the amount stated under sub-paragraph (3) is greater than the aggregate amount of any instalments which have fallen due in relation to the hereditament on or before the relevant day, the difference between the two shall be due from the ratepayer to the charging authority on the expiry of such period (being not less than 14 days) after the day of issue of the notice served under that sub-paragraph as is specified in it.

(6) If this paragraph applies in relation to a demand notice, and after the relevant day the conditions mentioned in section 43(1) or 45(1) of the Act are fulfilled again in the relevant year as regards the ratepayer and the hereditament concerned, a further notice shall be served on him requiring payments with respect to the amount payable in relation to the hereditament for the period in the relevant year beginning with the day in respect of which the conditions are so fulfilled again; and regulations 5 to 8 (and, so far as applicable, this Schedule) shall apply to the further notice with respect to that period as if it were a demand notice and the conditions had not previously been fulfilled.

7.—(1) This paragraph applies where the demand notice has been served on a ratepayer by a charging authority, any factor or assumption by reference to which the estimate made under regulation 6(1) for the purpose of the notice was calculated is shown to be false in respect of a day (“the relevant day”), and the event mentioned in paragraph 6(1) above has not occurred as regards the hereditament to which the notice relates.

(2) The charging authority shall on or as soon as practicable after the relevant day—

- (a) serve a notice on the chargeable person which is to state the amount of the revised estimate mentioned in sub-paragraph (3), and
- (b) adjust the instalments (if any) payable on or after the adjustment day (“the remaining instalments”) so that they accord with the amounts mentioned in sub-paragraph (4).

(3) The amount is the revised estimate of the charging authority of the amount payable for the relevant year in relation to the hereditament made on the assumption mentioned in regulation 6(1) and as if the notice mentioned in that provision were the notice referred to in sub-paragraph (2) above.

(4) The aggregate amount of the remaining instalments payable shall be equal to the amount by which the revised estimate mentioned in sub-paragraph (3) exceeds the aggregate amount of the instalments payable under the demand notice before the adjustment day; and the amount of each remaining instalment (if there are more than one) shall be calculated in accordance with paragraph 1(4) and (5) as if references in those provisions to the aggregate amount and to instalments were references to the aggregate amount of the remaining instalments and to the remaining instalments respectively.

(5) If the revised estimate mentioned in sub-paragraph (3) exceeds the aggregate amount of the instalments payable under the demand notice before the adjustment day, but no instalments are payable under it on or after that day, the amount of the excess shall be due from the chargeable person to the charging authority in a single instalment on the expiry of such period (being not less than 14 days) after the day of issue of the notice served under sub-paragraph (2) as is specified in it; and if in any case the revised estimate is less than the aggregate amount of the instalments payable before the adjustment day, any overpayment in respect of any liability of the ratepayer under Part II of these Regulations—

- (a) shall be repaid if the ratepayer so requires, or
- (b) in any other case shall (as the charging authority determines) either be repaid or credited against any subsequent liability of the ratepayer to pay anything to it by way of non-domestic rate.

(6) Where a notice has been given under sub-paragraph (2), in the operation of this paragraph as respects any further notice that may fall to be given under it, references in this paragraph to the demand notice and to amounts in respect of instalments payable under it shall be construed (so far as the context permits) as references to the demand notice, and amounts in respect of instalments

payable under the notice, as from time to time previously adjusted under this paragraph; and in calculating the aggregate amount of instalments payable under a demand notice before the adjustment day for the purposes of sub-paragraphs (4) and (5) in consequence of the calculation of the revised estimate mentioned in sub-paragraph (3), there shall not count as so payable any amount in respect of such instalments which has fallen to be repaid (or credited) under paragraph 10(4) of Schedule 7 to the Act or (on the occasion of the giving of a previous notice under sub-paragraph (2)) under sub-paragraph (5) above.

(7) In this paragraph "the adjustment day" means the day 14 days after the day the notice served under sub-paragraph (2) is issued.

8. If pursuant to regulation 4(3) the demand notice relates to more than one hereditament for which such an estimate as is referred to in regulation 6(1) is made—

- (a) references in paragraphs 6(1) to (5) and 7(1) and (3) to "the hereditament" shall be construed as references to all the hereditaments, so that paragraph 6 applies only if the event mentioned in sub-paragraph (1) of that paragraph has occurred in relation to all of them,
- (b) the relevant day shall be determined for the purposes of paragraph 6 by reference to the hereditament with respect to which the conditions referred to in sub-paragraph (1) of that paragraph were (or, as the case may be, would be) last fulfilled,
- (c) the reference to "the hereditament concerned" in paragraph 6(6) shall be construed as a reference to any of the hereditaments concerned, and
- (d) where neither the conditions mentioned in section 43(1) nor those mentioned in section 45(1) of the Act are fulfilled with respect to a hereditament to which the notice relates but paragraph 6 does not apply by virtue of paragraph (a) above, references in paragraph 7 to the revised estimate mentioned in sub-paragraph (3) of that paragraph shall be construed insofar as concerns that hereditament as references to the amount payable in relation to the hereditament for the period in the relevant year up to the day on which the conditions were last fulfilled.

9. More than one adjustment of amounts paid or payable under a demand notice may be made under this Part as the circumstances require.

SCHEDULE 2

Regulations 13(1) and 17(1)

ENFORCEMENT: PRESCRIBED FORMS

FORM A

LIABILITY ORDER IN RESPECT OF A NON-DOMESTIC RATE

Regulation 12 of the Non-Domestic Rating (Collection and Enforcement) (Local Lists) Regulations 1989

.....Magistrates' Court

Date:

Defendant:

Address:

On the complaint of [] that the sum of [] is due from the defendant to the complainant under Part II of the Non-Domestic Rating (Collection and Enforcement) (Local Lists) Regulations 1989 and is outstanding, it is adjudged that the defendant is liable to pay the aggregate amount specified below, and it is ordered that that amount may be enforced in the manner mentioned in Part III of those Regulations accordingly.

Sum payable and outstanding:

Costs of complainant:

Aggregate amount in respect of which the liability order is made:

Justice of the Peace

[or by order of the Court Clerk of the Court]

FORM B

LIABILITY ORDER IN RESPECT OF A NON-DOMESTIC RATE

Regulation 12 of the Non-Domestic Rating (Collection and Enforcement) (Local Lists) Regulations 1989

.....Magistrates' Court

Date:

On the complaint of [] that the sums specified in the Table below are due under Part II of the Non-Domestic Rating (Collection and Enforcement) (Local Lists) Regulations 1989 from the defendants so specified to the complainant and are outstanding, it is adjudged that the defendants are liable to pay the aggregate amounts specified in respect of them in the Table, and it is ordered that those amounts may be enforced in the manner mentioned in Part III of those Regulations accordingly.

TABLE

<i>Name and address of defendant</i>	<i>Sum payable and outstanding</i>	<i>Costs of complainant</i>	<i>Aggregate amount in respect of which the liability order is made with respect to the defendant</i>

Justice of the Peace

[or by order of the Court
Clerk of the Court]

FORM C

WARRANT OF COMMITMENT

Regulation 16 of the Non-Domestic Rating (Collection and Enforcement) (Local Lists) Regulations 1989

.....Magistrates' Court

Date:

Debtor:

Address:

A liability order ("the order") was made in respect of the debtor by the []
Magistrates' Court on [] under regulation 12 of the Non-Domestic Rating
(Collection and Enforcement) (Local Lists) Regulations 1989 ("the Regulations").

The court is satisfied-

- (i) that the [(name of charging authority)] ("the authority") sought under regulation 14 of the Regulations to levy by distress the amount then outstanding in respect of which the order was made of [], together with charges determined in accordance with Schedule 3 to the Regulations of [];
- (ii) that no (or insufficient) goods of the debtor can be found by the authority on which to levy that amount; and
- (iii) having inquired in the debtor's presence as to his means and as to whether the failure to pay which led to the order being made against him was due to his wilful refusal or culpable neglect, that it was due to such wilful refusal or culpable neglect.

The decision of the court is that the debtor be [committed to prison] [detained] for [] unless the aggregate amount mentioned below in respect of which this warrant is made is sooner paid.*

This warrant is made in respect of-

Amount outstanding (including charges)
in respect of which distress was sought:

Costs of commitment of the authority: _____

Aggregate amount:

And you [(name of person or persons to whom warrant is directed)] are hereby required to take the debtor and convey him to [(name of prison or place of detention)] and there deliver the debtor to the [governor] [officer in charge] thereof; and you, the [governor] [officer in charge], to receive the debtor into your custody and keep the debtor for [(period of imprisonment)] from the debtor's arrest under this warrant or until the debtor be sooner discharged in due course of law.

Justice of the Peace

[or by order of the Court
Clerk of the Court].

*Note: The period of imprisonment will be reduced as provided by regulation 16(7)(b) of the Regulations if part payment is made of the aggregate amount.

SCHEDULE 3

Regulation 14(2)(b)

CHARGES CONNECTED WITH DISTRESS

1. The sum in respect of charges connected with the distress which may be aggregated under regulation 14(2) shall be as set out in the following Table—

(1) <i>Matter connected with distress</i>	(2) <i>Charge</i>
A For making a visit to premises with a view to levying distress (whether the levy is made or not):	Reasonable costs and fees incurred, but not exceeding an amount which, when aggregated with charges under this head for any previous visits made with a view to levying distress in relation to an amount in respect of which the liability order concerned was made, is not greater than the relevant amount calculated under paragraph 2(1) with respect to the visit.
B For levying distress:	An amount (if any) which, when aggregated with charges under head A for any visits made with a view to levying distress in relation to an amount in respect of which the liability order concerned was made, is equal to the relevant amount calculated under paragraph 2(1) with respect to the levy.
C For the removal and storage of goods for the purposes of sale:	Reasonable costs and fees incurred.
D For the possession of goods as described in paragraph 2(3)—	
(i) for close possession (the man in possession to provide his own board):	£4.50 per day.
(ii) for walking possession:	45p per day.
E For appraisalment of an item distrained, at the request in writing of the debtor:	Reasonable fees and expenses of the broker appraising.
F For other expenses of, and commission on, a sale by auction—	
(i) where the sale is held on the auctioneer's premises:	The auctioneer's commission fee and out-of-pocket expenses (but not exceeding in aggregate 15 per cent. of the sum realised), together with reasonable costs and fees incurred in respect of advertising.
(ii) where the sale is held on the debtor's premises:	The auctioneer's commission fee (but not exceeding 7½ per cent. of the sum realised), together with the auctioneer's out-of-pocket expenses and reasonable costs and fees incurred in respect of advertising.
G For other expenses incurred in connection with a proposed sale where there is no buyer in relation to it:	Reasonable costs and fees incurred.

2.—(1) In heads A and B of the Table to paragraph 1, “the relevant amount” with respect to a visit or a levy means—

- (a) where the sum due at the time of the visit or of the levy (as the case may be) does not exceed £100, £12.50,
- (b) where the sum due at the time of the visit or of the levy (as the case may be) exceeds that amount, 12½ per cent. on the first £100 of the sum due, 4 per cent. on the next £400, 2½ per cent. on the next £1,500, 1 per cent. on the next £8,000 and ¼ per cent. on any additional sum;

and the sum due at any time for these purposes means so much of the amount in respect of which the liability order concerned was made as is outstanding at the time.

(2) Where a charge has arisen under head B with respect to an amount, no further charge may be aggregated under heads A or B in respect of that amount.

(3) An authority takes close or walking possession of goods for the purposes of head D of the Table to paragraph 1 if it takes such possession in pursuance of an agreement which is made at the time that the distress is levied and which (without prejudice to such other terms as may be agreed) is expressed to the effect that, in consideration of the authority not immediately removing the goods distrained upon from the premises occupied by the debtor and delaying its sale of the goods, the authority may remove and sell the goods after a later specified date if the debtor has not by then paid the amount distrained for (including charges under this Schedule); and an authority is in close possession of goods on any day for these purposes if during the greater part of the day a person is left on the premises in physical possession of the goods on behalf of the authority under such an agreement.

3.—(1) Where the calculation under this Schedule of a percentage of a sum results in an amount containing a fraction of a pound, that fraction shall be reckoned as a whole pound.

(2) In the case of dispute as to any charge under this Schedule, the amount of the charge shall be taxed.

(3) Such a taxation shall be carried out by the registrar of the county court for the district in which the distress is or is intended to be levied, and he may give such directions as to the costs of the taxation as he thinks fit; and any such costs directed to be paid by the debtor to the charging authority shall be added to the sum which may be aggregated under regulation 14(2).

(4) References in the Table to paragraph 1 to costs, fees and expenses include references to amounts payable by way of value added tax with respect to the supply of goods or services to which the costs, fees and expenses relate.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations, which are made under Part III of the Local Government Finance Act 1988, make provision for the collection and enforcement of non-domestic rates under the Act and related matters.

Regulation 2, in Part I, applies section 233 of the Local Government Act 1972 to the service of notices by the Common Council of the City of London or its officers under the Regulations, and also permits the service of notices at relevant places of business generally.

Part II (regulations 3 to 9) is principally concerned with the billing of persons liable to pay non-domestic rates. It requires, amongst other matters, charging authorities to serve demand notices each year on ratepayers (regulations 4 to 7) identifying the payments to be made, and provides for certain of such payments to be made by instalments during the year (Schedule 1). Where a person fails to pay an instalment in accordance with Schedule 1, in certain cases the unpaid balance of the charging authority's estimate of the amount payable for the year concerned will become payable immediately (regulation 8). Regulation 9 provides for the final adjustment of amounts payable under notices given under the Regulations.

Part III (regulations 10 to 23) makes provision for the enforcement of sums due under Part II. Amounts payable to a charging authority may be recovered under a liability order made by a magistrates' court (regulations 11 to 13), following the making of which the charging authority may levy distress (regulation 14 and Schedule 3), apply for the commitment of the debtor to prison if there are insufficient goods on which to make a levy (regulations 16 and 17), or prove the debt in insolvency (regulation 18). As an alternative to recovery under a liability order, a charging authority may bring proceedings in a court of competent jurisdiction (regulation 20). Amounts which are repayable to a ratepayer are also recoverable in a court of competent jurisdiction (regulation 22). Regulation 23 precludes matters which may be raised by way of appeal to a valuation and community charge tribunal being raised in proceedings for recovery under Part III, provides for the proof of contents of rating lists, and provides for the case where the amounts required under a notice given under Part II are adjusted after a liability order has been made.

Part IV (regulation 24) provides for the enforcement of outstanding rate liabilities in the administration of a ratepayer's estate on the death of the ratepayer.